

53-6-211. Suspension or revocation of certification -- Right to a hearing -- Grounds -- Notice to employer -- Reporting -- Judicial appeal.

(1) The council has authority to suspend or revoke the certification of a peace officer, if the peace officer:

- (a) willfully falsifies any information to obtain certification;
- (b) has any physical or mental disability affecting the peace officer's ability to perform duties;
- (c) is addicted to alcohol or any controlled substance, unless the peace officer reports the addiction to the employer and to the director as part of a departmental early intervention process;
- (d) engages in conduct which is a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;
- (e) refuses to respond, or fails to respond truthfully, to questions after having been issued a warning issued based on *Garrity v. New Jersey*, 385 U.S. 493 (1967);
- (f) engages in sexual conduct while on duty; or
- (g) is certified as a law enforcement officer, as defined in Section 53-13-103, and is unable to possess a firearm under state or federal law.

(2) The council may not suspend or revoke the certification of a peace officer for a violation of a law enforcement agency's policies, general orders, or guidelines of operation that do not amount to a cause of action under Subsection (1).

(3) (a) The division is responsible for investigating officers who are alleged to have engaged in conduct in violation of Subsection (1).

(b) The division shall initiate all adjudicative proceedings under this section by providing to the peace officer involved notice and an opportunity for a hearing before an administrative law judge.

(c) All adjudicative proceedings under this section are civil actions, notwithstanding whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted criminally.

(d) (i) The burden of proof on the division in an adjudicative proceeding under this section is by clear and convincing evidence.

(ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of proof to establish the affirmative defense by a preponderance of the evidence.

(e) If the administrative law judge issues findings of fact and conclusions of law stating there is sufficient evidence to demonstrate that the officer engaged in conduct that is in violation of Subsection (1), the division shall present the finding and conclusions issued by the administrative law judge to the council.

(f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the peace officer to the council before a peace officer's certification may be suspended or revoked.

(g) If the administrative law judge finds that there is insufficient evidence to demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall dismiss the adjudicative proceeding.

(4) (a) The council shall review the findings of fact and conclusions of law and

the information concerning the peace officer provided by the officer's employing agency and determine whether to suspend or revoke the officer's certification.

(b) A member of the council shall recuse him or herself from consideration of an issue that is before the council if the council member:

- (i) has a personal bias for or against the officer;
- (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome; or
- (iii) employs, supervises, or works for the same law enforcement agency as the officer whose case is before the council.

(5) (a) Termination of a peace officer, whether voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(b) Employment by another agency, or reinstatement of a peace officer by the original employing agency after termination by that agency, whether the termination was voluntary or involuntary, does not preclude suspension or revocation of a peace officer's certification by the council if the peace officer was terminated for any of the reasons under Subsection (1).

(6) A chief, sheriff, or administrative officer of a law enforcement agency who is made aware of an allegation against a peace officer employed by that agency that involves conduct in violation of Subsection (1) shall investigate the allegation and report to the division if the allegation is found to be true.

(7) The council's suspension or revocation of an officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4, Judicial Review.

Amended by Chapter 115, 2013 General Session

Amended by Chapter 269, 2013 General Session